

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1085 of 1996

WITH

CIVIL REVISION APPLICATION No.1086 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KARADIA NATHAVIRA PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner

Mr. BD DESAI, A.G.P. for Respondent No. 1, 2.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 10/09/96

ORAL JUDGEMENT

Rule. Mr. B.D. Desai, A.G.P.waives service of rule.

Since common questions are involved in both the Revision Applications they are being disposed of by this common judgment.

In these two Revision Applications under Section 115 of the Code of Civil Procedure, 1908("Code"), common question raised on behalf of the petitioners is that the appeals filed before the District Court came to be disposed of on merits while disposing of an interlocutory application without giving an opportunity of hearing on merits. A Review Application was also given in both the appeals which also came to be disposed of by the learned Extra Assistant Judge, Junagadh wherein it is clearly stated that it was wrongly mentioned in the judgment by a slip of pen or by any mistake and for that reason there is no dispute. The mistake was sought to be corrected by resorting to the provisions of Secs.151,152 and 153 of the Code. In reality provisions of those Sections are not attracted when the hearing is not made on merits. It was open for the Court to dispose of the appeals on merits while disposing of application for interim order.

Having regard to the facts and circumstances, instead of entering into the merits of other contentions, it would be just and appropriate to remand the appeals for disposal on merits after hearing the parties in accordance with law.

In the result, both the Applications are allowed. The impugned judgment and decree are quashed and set aside and both the appeals are remitted back to the District Court at Junagadh. Civil Misc. Appeals nos.46/96 and 47/96 are ordered to be restored with a direction to hear both the matters afresh and decide on merits in accordance with law after giving opportunity of hearing to the parties as expeditiously as possible in view of the circumstances of the case. Rule is made absolute to the aforesaid extent with no orders as to costs.

sf-jnb.